(13)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

WRIT PETITION NO. 6057 **OF 2000**

PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA

I.K.Manchanda, aged about 60 years, son of Shri G.D. Manchanda, C/o Gagan Fuels, Torwa, resident of **BILASPUR** .... PETITIONER

VERSUS

1. Central Bank of India, through its Chairman, Head Office at Chandramukhi, Nariman Point, **MUMBAI - 400 021**
2. Shri T.R.Verma, Deputy General Manager/Appellate Authority, Central Bank of India, Zonal Office, **RAIPUR**
3. Shri V.S.Gore, Regional Manager / Disciplinary Authority, Central Bank of India, Regional Office, Mahamaya Road, **AMBIKAPUR (U.P.)** .... RESPONDENTS

1. **Particulars of the petitioner** :

AFR

14

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION NO.6057 OF 2000

I.K. Manchanda

versus

Central Bank of India and others

ORDER

Post for 20th-11-2006

Sd/-
Satish K. Agnihotri,
Judge

(14)

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION NO.6057 OF 2000

Petitioner : I.K. Manchanda

versus

Respondents : Central Bank of India and others

Present : Mr. Ravi Ranjan Sinha, counsel for the petitioner.
Mr. B.D.Guru, counsel for the respondents.

ORDER

(Passed on 20th of November, 2006)

In the present petition filed under Articles 226/227 of the Constitution of India, the impugned order dated 2-3-2000 (Annexure P-2) passed by the Disciplinary Authority/Regional Manager awarding penalty of dismissal from service on the petitioner and appellate order dated 21-8-2000 (Annexure P-3), whereby the appeal was also dismissed.

2. The facts, in nutshell, are that the petitioner, while working as Branch Manager, Nemnakala Branch, was served with a charge-sheet dated 1-9-1986. An enquiry was conducted against him. The Enquiry Officer exonerated the petitioner from all the charges. The Disciplinary Authority, disagreeing with the findings of the Enquiry Officer, imposed the penalty of dismissal from service vide order dated

1-12-1987. The appeal preferred against the said order was dismissed by the appellate authority vide order dated 15-6-1988.

3. Being aggrieved, the petitioner filed a writ petition, being Miscellaneous Petition No.1381 of 1989, in the High Court of Judicature of Madhya Pradesh at Jabalpur. The High Court, after hearing, observed and held as under :-

> "Rule under consideration in the aforesaid case is the same as in the present case. In view of the authoritative pronouncement of the Supreme Court, I have no hesitation in accepting the submission of Sri Arya that the Disciplinary Authority before disagreeing with the finding of the Enquiry Officer ought to have given him notice conveying tentative reasons for disagreement and opportunity to the petitioner to place his view point in order to meet the requirement of the principle of natural justice. This has not been done. This itself vitiates the impugned order. Accordingly the order of the Disciplinary Authority dt. 1.12.1987 (Annex.P/3) and the Appellate Authority dated 15.6.1988 (Annex.P/5) are quashed and the matter is remitted back to the Disciplinary Authority who shall take final decision within 3 months from the date of receipt/production of a copy of this order, in accordance with law bearing in mind the observation made above."

4. The petition was allowed by order dated 16-11-1999 (Annexure P-1). The order of the learned Single Judge of the High Court of Judicature of Madhya Pradesh at Jabalpur became final as no

appeal/petition was preferred against the said order dated 16-11-1999 (Annexure P-1).

5. Pursuant to the order dated 16-11-1999 (Annexure P-1) passed by the High Court, the Disciplinary Authority – respondent No.3 issued a notice dated 9-2-2000 (Annexure R-1) as under :-

"Notice

Shri I.K. Manchanda, Branch Manager, Nemnakala Branch (under suspension) has been served with the chargesheet no.RM/VIG/8/86/3892, Dated 01.09.1986 issued by Shri J.D.Malik, Regional Manager, Shahdol, in the capacity of Disciplinary Authority.

Consequent upon reorganisation of Regions, since Nemnakala Branch has come under the territorial jurisdiction of Ambikapur Region, the undersigned in the capacity of Regional Manager, Ambikapur being vested with the powers of Disciplinary Authority, hereby adopts the above referred chargesheet and shall act as the Disciplinary Authority with regard to the above said chargesheet.

It is further notified that in terms of Order dated 16.11.99 of the Hon'ble High Court of Madhya Pradesh at Jabalpur, the findings of the enquiry proceedings dated 10.01.87 to 25.04.87 with Shri P.C.Mishra as Enquiry Officer and Shri R.P.Khajanchi as Presenting Officer, shall hold good for the purpose."

144

6. Thereafter, a show cause memo dated 14-2-2000 (Annexure R-2) was issued by the Disciplinary Authority – respondent No.3 to the petitioner in following terms :-

" -: Show Cause Memo :-

I have gone through the findings of Shri P.C.Mishra, Enquiry Officer, in the matter of departmental enquiry held against Shri I.K. Manchanda, Branch Manager, Nemnakala Branch (Under Suspension) in pursuance to the Charge Sheet no.RM/VIG/8/86/3892 dated 01.09.86 served on him.

I agree with the findings of the Enquiry Officer. Copy of the findings of the Enquiry Officer, dated 24.09.87 is being enclosed. The undersigned in the capacity of Disciplinary Authority will take a suitable decision on the matter after examining the same.

In the meantime, if Shri I.K. Manchanda desires to make any submission against the Findings of the Enquiry Officer, he may do so on 29.02.2000 at Ambikapur before the undersigned, failing which it shall be presumed that he has no submissions to make against the Findings of the Enquiry Officer and the undersigned shall proceed to pass the Final Order."

7. The petitioner filed his reply to the notice dated 9-2-2000 (Annexure R-1) vide representation dated 20-2-2000 (Annexure P-5) opposing holding of a *de novo* enquiry submitting that the holding of *de novo* enquiry amounts to contempt of Court. The Disciplinary Authority, vide order dated 29-2-2000 (Annexure P-6), after recording that the

-145

petitioner had failed to file any response pursuant to the notice dated 9-2-2000 (Annexure R-1) and the show cause memo dated 14-2-2000 (Annexure R-2), proposed following punishment :-

> "01-Charge No.1- The undersigned agrees that the charge is partly proved and proposes a punishment of "Dismissal from service which shall ordinarily be a disqualification for future employment.
>
> 02-Charge No.2- The undersigned agrees that the charge is partly proved and proposes a punishment of "Dismissal from service which shall ordinarily be a disqualification for future employment.
>
> 03-Charge No.5- The undersigned agrees that the charge is partly proved and proposes a punishment of "Reduction of pay by one stage in the time scale of pay.
>
> 04-Charge No.8- The undersigned agrees that the charge is fully proved and proposes a punishment of "Dismissal from service which shall ordinarily be a disqualification for future employment.
>
> 05-Charge No.10- The undersigned agrees that the charge is partly proved and proposes a punishment of "Dismissal from service which shall ordinarily be a disqualification for future employment."

8. It was further observed that if the petitioner desires to make any representation or submission regarding the proposed

196

punishment, a personal hearing would be afforded to the petitioner on 2-3-2000 at 11 A.M. at the premises of Regional Office, Ambikapur, failing which, it would be presumed that the petitioner has no submission to make against the proposed punishment. The petitioner thereafter submitted a representation on 2-3-2000 (Annexure P-7) praying for one week's time to present his case through defence representative. The Enquiry Officer, after having heard the petitioner, declined to grant time for consulting defence representative of the petitioner, concluded the proceedings and passed the impugned order dated 2-3-2000 (Annexure P-2) awarding a consolidated penalty of "Dismissal from service" under Regulation 4(J) of the Central Bank of India Officers Employees' (Discipline and Appeal) Regulations, 1976.

9. Being aggrieved, the petitioner preferred an appeal before the Deputy General Manager – Appellate Authority. The Appellate Authority, in the course of hearing of appeal, provided opportunity for a personal hearing on 10-6-2000. On 10-6-2000, the petitioner, along with the defence representative, requested for some more time for preparation of his case. The petitioner was granted time till 19-6-2000. On 19-6-2000, the petitioner submitted his defence and requested to consider his appeal on humanitarian grounds. The Appellate Authority, after having considered the defence of the petitioner, held as under :-

> "The undersigned has carefully gone through the chargesheet, findings of the enquiry, exhibits, Show Cause Memos, final orders dated 02/03/2000 vis-à-vis the appeal dated 22/03/2000 and his submissions dated 19/06/2000 and finds that the Disciplinary Authority has, in his final

1 C 7

orders dated 02/03/2000, in respect of charge No.1, charge No.2, charge No.8 and charge No.10 awarded the penalty of "Dismissal from service giving out his own findings with justified reasonings with reference to the findings of the Enquiry Officer and then awarded the penalties. The appellant did not furnish any new points or evidences in regard to the above charges in his appeal/written submissions/personal hearings which may attract the attention of the undersigned in order to consider his appeal for any relief or relaxations in the penalty. The undersigned observed that the points raised by the appellant are related to merely on compliance of the Court's orders by the Disciplinary Authority and he has discussed the issues regarding his position in the Bank and other benefits to him.

The undersigned, therefore, finds the final orders dated 02/03/2000 passed by the Disciplinary Authority in order and finds the charges as proved against which the penalty of "Dismissal from service" has been awarded to the appellant. The undersigned also finds the penalty of "Dismissal from service" as an appropriate and justified penalty for proven misconducts of the appellant. It is pertinent to add here that technicalities raised are not going to mitigate the gravity/seriousness of charges levelled against him which conclusively proved beyond any doubts.

In view of the foregoings the undersigned agrees with the penalty of "Dismissal from service" as awarded to the appellant by the Disciplinary Authority vide his final orders dated 02/03/2000 and the same penalty of "Dismissal from service which shall ordinarily be a disqualification for

148

future employment" is hereby confirmed by the undersigned.

It is further clarified here that the appellant was earlier dismissed from bank's service vide final orders dated 01/12/1987 and on technicality, remitting the case by the Hon'ble High Court, Jabalpur vide order dated 16.11.1999 for review to take a final decision of the Disciplinary Authority, the Disciplinary Authority, after review of the case in its entirety has awarded the penalty of "Dismissal from service" vide his final orders dated 02/03/2000, therefore, the status of the appellant remains that of a dismissed employee only since 01/12/1987."

and dismissed the appeal of the petitioner by order dated 21-8-2000 (Annexure P-3).

10. Heard learned counsel for the parties, perused the petition, return and documents appended to the petition as also to the return.

11. The only contention of the petitioner is that respondent No.3 – the Disciplinary Authority has passed the order without affording an opportunity of hearing to the petitioner and as such the impugned order dated 2-3-2000 (Annexure P-2) passed by the Disciplinary Authority/Regional Manager as well as the order dated 21-8-2000 (Annexure P-3) passed by respondent No.2 – the Appellate Authority are vitiated. On perusal of the documents, it is evident that a proper notice dated 9-2-2000 (Annexure R-1) and a show cause memo dated 14-2-2000 (Annexure R-2) were issued by the Disciplinary Authority.

149

The Disciplinary Authority thereafter issued a show cause memo dated 14-2-2000 as to why the petitioner be not dismissed from service. The petitioner submitted his representation on 20-2-2000 (Annexure P-5). The Disciplinary Authority, after having considered the representation of the petitioner, fixed the matter for personal hearing on 2-3-2000, wherein a request made by the petitioner for grant of time to obtain assistance of defence representative was rejected and the Disciplinary Authority proceeded to pass the impugned order of punishment. It is obvious that the Disciplinary Authority has considered the representation, but personal hearing in substance could not be granted to the petitioner. The Appellate Authority, having noticed the defect of not affording personal hearing to the petitioner, issued a notice to the petitioner for affording him opportunity of personal hearing. The matter was fixed for personal hearing on 10-6-2000 and at the request of the petitioner the matter was adjourned to 19-6-2000 and the petitioner was afforded substantial hearing on the next date, i.e., 19-6-2000. The Appellate Authority, after having complied with the principles of natural justice, passed the appellate order dated 21-8-2000 (Annexure P-3). Learned counsel for the petitioner has not raised any other point like perversity in the report, finding is not supported by any evidence.

12. The Supreme Court, in the matter of ***Punjab National Bank and others vs. Kunj Behari Misra***[1], while dealing with the question of opportunity in case the Disciplinary Authority disagrees with the enquiry authority, observed as under :-

> "17. These observations are clearly in tune with the observations in *Bimal Kumar Pandit case*[8]

quoted earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the enquiry officer had given an adverse finding, as per *Karunakar case*[4] the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the enquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must given him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority."

"19. The result of the aforesaid discussion would be that the principles of natural justice have to be

read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

13. In another case of **Canara Bank and others vs. Debasis Das and others**[2], the Supreme Court, while discussing with the concept of natural justice, observed as under :-

"19. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the

enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life."

"21. How then have the principles of natural justice been interpreted in the courts and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi-judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is "*nemo judex in causa sua*" or "*nemo debet esse judex in propria causa sua*" as stated in *Earl of Derby's case*[16] that is, "no man shall be a judge in his own cause". Coke used the form "*aliquis non debet esse judex in propria causa, quia non potest esse judex et pars*" (Co. Litt. 1418), that is, "no man ought to be a judge in his own case, because he cannot act as judge and at the same time be a party". The form "*nemo potest esse simul actor et judex*", that is, "no one can be at once suitor and judge" is also at times used. The second rule is "*audi alteram partem*", that is, "*hear the other side*". At times and particularly in continental countries, the form "*audietur et altera pars*" is used, meaning very much the same thing.

A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely "*qui aliquid statuerit, parte inaudita altera acquum licet dixerit, haud acquum fecerit*" that is, "he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right" [see *Boswel's case*[17] (Co Rep at p. 52-a)] or in other words, as it is now expressed, "justice should not only be done but should manifestly be seen to be done". Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon (*sic* open). All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated."

14. In the case of **Viveka Nand Sethi vs. Chairman, J & K Bank Ltd. and others**[3], the Supreme Court observed as under :-

"22. The principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality. Even the principle of estoppel will apply. [See *Gurjeewan Garewal (Dr.)* v. *Dr. Sumitra Dash*[3].] The principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be put in a straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. (See *State of Punjab* v. *Jagir Singh*[4] and *Karnataka SRTC* v. *S.G. Kotturappa*[5].)"

15. In the case of ***Ranjit Singh vs. Union of India and others***[4], the Supreme Court observed as under :-

> "22. In view of the aforementioned decisions of this Court, it is now well settled that the principles of natural justice were required to be complied with by the disciplinary authority. He was also required to apply his mind to the materials on record. The enquiry officer arrived at findings which were in favour of the appellant. Such findings were required (*sic* sought) to be overturned by the disciplinary authority. It is in that view of the matter the power sought to be exercised by the disciplinary authority, although not as that of an Appellate Authority, but is akin thereto. The inquiry report was in favour of the appellant but the disciplinary authority proposed to differ with such conclusions and, thus, apart from complying with the principles of natural justice it was obligatory on his part, in the absence of any show-cause filed by the appellant, to analyse the materials on record afresh."

16. Coming to the facts of the present case, the Disciplinary Authority has already issued show cause memo to the delinquent (the petitioner). The Appellate Authority has considered the case in detail and has afforded full opportunity of personal hearing to the petitioner. Thus, the requirement of principle of natural justice has fully been complied with in the present case.

17. It is well settled principle of law that the scope of judicial review under Articles 226/227 of the Constitution of India is limited to the deficiency in decision making process and not the decision. In the

present case, no deficiency in decision making process has been found and the petitioner did not question the impugned order on the basis of perversity, infirmity or lack of evidence in the decision.

18. For the reasons and analysis made hereinabove, this petition is dismissed. In the facts and circumstances of the case, no order as to costs.

Sd/-
Satish K. Agnihotri
Judge

---

1 (1998) 7 SCC 84
2 (2003) 4 SCC 557
3 (2005) 5 SCC 337
4 (2006) 4 SCC 153

Gopal